

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
-vs-) Case No. 1:12-CR-181-TWT
CHARLIE SHIVERS, III,) May 15, 2012
)
Defendant.) Atlanta, Georgia
)

TRANSCRIPT OF THE PRELIMINARY AND DETENTION HEARING
BEFORE THE HONORABLE ALAN J. BAVERMAN,
U.S. MAGISTRATE COURT JUDGE

APPEARANCES OF COUNSEL:

On behalf of the Government: Gale McKenzie
Alana Black
Office of the U.S. Attorney

On behalf of the Defendant: Jennifer Hanson
Office of Bruce S. Harvey

*Proceedings recorded in digital audio format
and computer-aided transcript produced by*

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(Proceedings held in Atlanta, Georgia, May 15, 2012,
in open court, Defendant present.)

3 THE COURT: All right. The next case is the case of
4 United States of America versus Charlie Shivers, III. It's
5 Case Number 1:12-MJ-644. Ms. McKenzie and Ms. Black are here
6 representing the United States, and Ms. Hanson is here
7 representing Mr. Shivers. I set this over for a preliminary
8 hearing and detention hearing.

9 Is everyone ready?

10 MS. MCKENZIE: Yes, Your Honor, ready for the
11 Government.

12 MS. HANSON: Yes, Your Honor, we're ready. And it
13 doesn't make any difference for a written record; but for the
14 Court's edification, his name is pronounced Shivers.

15 THE COURT: Shivers. I'm sorry.

16 MS. HANSON: No problem.

17 THE COURT: With a last name like Baverman, I'm very
18 sensitive to correct pronunciations of last names. So I
19 apologize, Mr. Shivers.

20 All right. Ms. McKenzie, you may proceed.

21 MS. MCKENZIE: Your Honor, as far as detention goes,
22 if I could make a statement, a proffer supported by exhibits
23 that have been provided to the defense. And if I may hand up
24 to the Court first 1 through 12.

25 THE COURT: Any objection?

1 MS. HANSON: I do object to the Government's Exhibit
2 1 with regard to relevance as to detention.

3 MS. MCKENZIE: Your Honor, Government's Exhibit 1 are
4 the treasury checks or the false refund checks and the tax
5 returns found in the search of the Defendant's residence this
6 past Saturday. And they total about -- just under \$5.5
7 million.

8 THE COURT: Ms. Hanson?

9 MS. HANSON: I'm not certain how that relates to
10 detention.

11 THE COURT: Well, I think I'll let the exhibit in and
12 I'll let Ms. McKenzie try to explain how it relates to
13 detention.

14 MS. MCKENZIE: First of all, the Defendant is facing
15 ten years in custody under the guidelines. So there's
16 basically no reason to stay in the United States. The
17 Defendant was recorded with a CI on last Saturday -- Friday,
18 the 11th; and he is telling the CI that, I'm gone, I'm outta
19 here, I'm gone.

20 He has tremendous ties to Australia. He is talking
21 marriage to a girlfriend there. He has traveled to Australia a
22 number of times. He has -- Government's Exhibit 2 and 3 are
23 plane tickets where he goes to LAX and then on to Australia,
24 and one of them shows a money conversion of \$10,000.

25 Also, the Defendant said on the tape, and his records

1 reflect, that he has multiple bank accounts in Australia.
2 That's Exhibit 4 and Exhibit 5 are accounts at the Bank of
3 Melbourne and the Commonwealth Bank in Australia. And Exhibit
4 6 is a list of bank account numbers in Australia and Swift
5 transfers. Those came from the Defendant's records obtained
6 via search warrant this past Saturday; and they are dated in
7 2012, actually in March of '12. We know the last time the
8 Defendant went to Australia was March 28th, 2012.

9 And what is so unfortunate is even though we had a
10 red flag out for him the records that Secret Service has access
11 to did not show to this day that he ever returned to the United
12 States. But he's clearly here. So we can't monitor his travel
13 even though when we were trying to do so we weren't able to do
14 -- monitor his international travel.

15 Government's Exhibit 7 is a letter from Chase to the
16 Defendant here in the States which is cutting him off from
17 banking with Chase because of the questionable transactions.

18 The Defendant on his tape -- on the tape from last
19 Friday, May the 11th, said he had bought a new pad in
20 Australia. And his records that were seized during the search,
21 Government's Exhibit 8, shows a listing of Australian
22 residences. They support each other that he has the pad in
23 Australia because there's the listings and so forth.

24 His records that were seized on Saturday include
25 Government's Exhibit 9 which talk about importing vehicles to

1 Australia. The Defendant has a Corvette here in Atlanta, and
2 he was talking to the CI that he was originally planning on
3 taking his car to Australia. However, now he is having to
4 leave the car and hit the eject button and go boom, a quote
5 from the Defendant on that tape.

6 In addition, the Defendant on the tape says that he's
7 making -- bringing in three to four million dollars gross from
8 an import/export business in Australia. So we would just get
9 new stuff there. That's -- also shows that there's no reason
10 that he would have to stay in the United States.

11 The 508 address where he stayed, Morgan Street in
12 Atlanta where he stayed when -- on the times that he visited
13 Atlanta was a couch in a living room. He didn't even have a
14 bedroom there. So we don't believe he has strong ties to
15 Atlanta.

16 Yes, he does have a brother here; but he keeps
17 talking about on the tape about breaking ties 'cause he has to
18 support the brother and everything here. He talks about on the
19 tape about -- and I have a rough transcript for the Court with
20 these highlights highlighted -- it's very rough -- which I'll
21 hand up in just a moment. But --

22 THE COURT: Is that Number 10?

23 MS. MCKENZIE: That was the agent's notes, but -- who
24 listened to the tape again last night.

25 But Number 11 -- and I have provided the defense with

1 a -- let them read my highlighted copy and provided them with a
2 copy plus the tape itself.

3 He talks about on the tape going to have to
4 hibernate, to tuck his stuff away here and hop on a plane and
5 hibernate until he gets a call, that he is expecting two more
6 checks, a \$300,000 one and a \$500,000 one. And he's going to
7 hibernate.

8 He says on the tape in all these on Government's
9 Exhibit 11 which is the very rough transcript -- he says he's
10 fixing to be across the Pacific. He said that on Friday. And
11 he was leaving on Saturday for the first leg of his trip, that
12 is, to L.A.. And you'll see from the exhibits, his prior plane
13 tickets he would go to L.A. for a few days and then on to
14 Australia.

15 He admits on this tape of getting \$3 million in
16 refund checks during the past two years, and he shows the CI a
17 number of the checks that are listed on Government's Exhibit 1.
18 You can see when I've got a date in the column for checks those
19 are the checks he showed the CI. And the other entries are
20 returns that were recovered during the search also that don't
21 have any checks matching them in the Defendant's possessions as
22 of Saturday -- or Friday. But the total -- and he explains on
23 the tape that this is a game filing all these returns, and he's
24 gotten approximately \$3 million back out of filing the multiple
25 returns which these returns that he had in his possession

1 totaled almost 5.5 million.

2 There are two Social Security numbers that the -- for
3 the Defendant on his rap sheet. Another quote from the
4 Defendant's tape on Friday is that, I'm going to work out, get
5 in shape, go to another country and be the baddest MF a lady
6 will ever meet. And he goes on to say about he's got to leave
7 now because -- he uses the N word; I'm going to use
8 "co-conspirators" -- are, quote, taking away my breathing room,
9 so it's time to go. I done sold them everything. Just go.
10 And some of the other highlights there are, Gotta hit the eject
11 button and boom. I gotta get out of town and keep going, don't
12 know why I came back in the first place. He says also that he
13 has enough money to sustain him over there, mentions his bank
14 accounts in Australia and grossing three to four million in
15 Australia in the import/export business.

16 Moreover, the present scheme can be conducted from
17 abroad as well as here. The Defendant filed paper returns, so
18 in various IRS centers -- so they couldn't be traced back to
19 the IP address. He wore as he says on the tapes gloves and
20 body protection so his DNA wouldn't get on the returns.

21 Each time he filed a return he used a different --
22 he reactivated somebody else's company and just used a shell
23 company name to file returns. Every time it's a different
24 company name, and the checks are sent to different addresses
25 every single time. So there's no way to trace that.

1 And then the Defendant has another set of people
2 negotiate those checks for him, so that can be done from abroad
3 as well as from here. He could still bring in -- and the
4 Government can't even -- the two outstanding checks, the 300
5 and 500 thousand that Charlie Shivers and Anthony Shivers, his
6 brother, have talked about for several weeks now, we can't put
7 a stop on them because we don't know what corporation name he
8 used and what address it was sent to or the specific amounts in
9 order to put a hold on it.

10 So he's got an unlimited source of funds. He's made
11 the statement that he's leaving. He's got a support of his
12 girlfriend who he is talking about marrying in Australia and
13 his assets moved to Australia.

14 But one of the most disturbing things that supports
15 detention more than anything else is the Defendant's attempt to
16 mislead this Court on Monday. The Defendant told the probation
17 officer that his girlfriend in Australia -- and I have marked
18 this as Government's Exhibit 12, the pre-sentence -- Pretrial
19 Services Report. He told the Pretrial Services officer that
20 that was his ex-girlfriend, and from the transcript and the
21 tape itself it's clear that this is not an ex-girlfriend. And
22 he does have many more ties to Australia, and he has already
23 made up his mind to leave and has a support system both
24 emotional and economic already set up in Australia.

25 The second prong of the Government's argument for

1 detention in addition to risk of flight is the economic danger
2 to the community. The Defendant continued his scheme, very
3 substantial scheme, after learning that other of his
4 co-conspirators were under investigation by the Secret Service
5 and IRS, Derrick Lawson, Calvin and Cordell Barnes, Reynold
6 Scott, Leroy Carter. He was actually -- Defendant was actually
7 present during some of the interviews when the agents showed up
8 to interview at least one of these -- at least one of the
9 interviews connected with these other investigations.

10 Leroy Carter was sentenced to jail last week, and he
11 knows that these other people are under investigation. In
12 fact, there's conversations about who's going to talk and who's
13 not going to talk and the concerns; and that's one of the
14 reasons that he was planning to leave Saturday of last week and
15 also to make arrangements to receive the extra \$800,000-plus
16 that he expected to come in.

17 He didn't slow up. And there are other documents
18 that we seized that appear that he may have been filing returns
19 that don't appear on Government's Exhibit 1. And the way he
20 structured the scheme, as I stated, he has continued it after
21 he has known about the criminal investigations and he can
22 continue it if he were released. And that's -- certainly the
23 taxpayers are overly burdened as it is and to have millions of
24 dollars in these gas refund tax credits to be sent back when
25 the Defendant never ever had a business that had any off-road

1 trucking involved in the business.

2 The tape alone from April the 11th --

3 THE COURT: May the 11th.

4 MS. MCKENZIE: May the 11th. The May the 11th tape
5 also establishes probable cause that the Defendant was involved
6 in this scheme and was filing these tax returns, and he knew it
7 was wrong because he was covering up his fingerprints and his
8 DNA so he couldn't be detected. And Government's Exhibit 1
9 shows over \$5.5 million involved in this scheme that was in the
10 Defendant's possession.

11 So I think that the exhibits that we have introduced
12 establish probable cause that the Defendant committed these
13 crimes and that there is no condition that the Court could set
14 that would ensure his appearance because in his own words he
15 said, I'm outta here, I'm gone. They've taken away my
16 breathing room. It's time to go, hit the eject button. And he
17 has got enough money to sustain him abroad.

18 THE COURT: I think you have to put up evidence on
19 the PC, so --

20 MS. MCKENZIE: I'm going to call the agent for that.
21 I was just...

22 Alex, Agent Herrera?

23 (Witness placed under oath by the clerk.)

24 THE CLERK: Please have a seat. State and spell your
25 name for the record.

1 THE WITNESS: Yes. It's Alexandre Herrera,
2 A-l-e-x-a-n-d-r-e, last name H-e-r-r-e-r-a.
3 - - -
4 ALEXANDRE HERRERA,

5 having been first duly sworn, was examined and testified as
6 follows:

7 DIRECT EXAMINATION

8 BY MS. MCKENZIE:

9 Q. How are you employed, sir?

10 A. I'm a special agent with the United States Secret Service.

11 Q. Have you been assigned to the investigation of the Charlie
12 Shivers, III, case and others?

13 A. That's correct.

14 Q. Okay. How did that Mr. Shivers come to your attention?

15 A. From information generated from the CI.

16 Q. Okay. Did the CI provide you any documentation?

17 A. He did.

18 Q. What was that?

19 A. A photocopy of a United States Treasury check that was
20 issued fraudulently or filed fraudulently and as well as taped
21 conversations and other conversations with Anthony Shivers
22 which is the brother of Charlie and with Charlie.

23 Q. Okay. What company was that check issued to?

24 A. Transportation and Distributing Consultants, Inc.

25 Q. Okay. And what was the refund -- was it an IRS refund

1 check?

2 A. It was.

3 Q. And you can tell that by looking at the check?

4 A. I can.

5 Q. Are you trained in those -- examining treasury checks?

6 A. I can -- yes, I am.

7 Q. Okay. And what was the check issued for?

8 A. It was for a tax -- a fuel tax refund for -- specifically
9 for off-road fuel consumption. And it's a program that the IRS
10 has, the government has that if they claim a certain amount of
11 gallons -- and it's usually in the thousands of gallons to
12 receive a check like this -- then they are able to hold that
13 against the taxes that they owe basically, and they can -- and
14 they are able to be issued a check minus what they owe.

15 Q. Okay. Has your research and interview of witnesses
16 determined whether or not the Defendant ever owned off-road
17 trucking businesses?

18 A. No research has shown that he has owned a trucking
19 business.

20 Q. Okay. Did you check with the Department of Treasury to --
21 did the CI tell you anything else about this \$538,000 check?

22 A. He told me that this was a re-issued check and that the
23 original one was messed up when someone tried to negotiate it
24 and that Charlie filed paperwork to be able to get a check
25 re-issued so he could negotiate.

1 Q. Okay. And was that confirmed during the May 11th taped
2 conversation between the CI and the Defendant?

3 A. That was confirmed two obvious times. One time was during
4 the tape. And then also -- when I first received a copy of the
5 check, I took it to the Department of Treasury, sent them a
6 copy; and they provided paperwork to show the check was
7 re-issued. The -- and the second one was deposited
8 successfully.

9 And then during the CI conversation on tape on May the
10 11th, Charlie Shivers explained to the CI his scheme and how he
11 got the re-issued check because someone messed up the first one
12 because they tried to take his money from the check. And he
13 showed him the paperwork as well, and the paperwork was also
14 seized the next -- the following day during the search warrant.

15 Q. And when you say paperwork, what kind of paperwork?

16 A. Charlie had a copy of the original check and the messed-up
17 endorsement on the back. So the bank obviously returned him
18 the original check, and he had that in his possession. And
19 then he also had a copy of the re-issued check and the
20 original.

21 Q. And what about the form that requested re-issuance of the
22 check?

23 A. He had paperwork that you would -- you would file to
24 return -- to get a re-issued check --

25 Q. Okay.

1 A. -- and other tax documents as well there.

2 Q. Okay. Now, after you verified some of what the CI was
3 telling you, did you instigate an undercover operation?

4 A. We did.

5 Q. Okay. Did you receive anything else from the CI prior to
6 that -- the undercover work?

7 A. I received a -- along with a copy of a check, I also later
8 received a video of Anthony Shivers, the brother of Charlie.
9 And in the video, Anthony gave many details on the scheme.

10 Q. Okay. And what was Mr. Charlie Shivers' part of the
11 scheme according to his brother?

12 A. Charlie was the brains behind -- and that's in Charlie's
13 own words according to our CI as well as he was the brains of
14 the operation, and he was the one that was filing the
15 fraudulent tax returns.

16 Q. Okay. And how were -- did Mr. Charlie Shivers ever state
17 on tape where he was having the refund checks sent?

18 A. He did. He listed New York, Oklahoma and California as
19 states that he would send the check to.

20 Q. And was he paying anybody to take possession of those
21 checks and send them to him?

22 A. He would pay 10,000 or 15,000 dollars for someone to
23 receive the check at an address and then send the check to him.

24 Q. And did he have -- and was the 538,000 one of those
25 checks?

1 A. It was.

2 Q. Where was it sent?

3 A. It was sent to Desert Hot Springs, California.

4 Q. And that was the person who received it tried to cash it
5 on him?

6 A. He did.

7 Q. Did he have problems according to Mr. Shivers, Charlie
8 Shivers, on tape with another such individual holding the check
9 hostage?

10 A. Yes. The CI stated that he had held -- one of the people
11 that received the check held the envelope up into the light and
12 revealed the amount on the check which possibly he didn't know
13 what the amount was; and with him only getting paid 10 or 15
14 thousand dollars he became greedy according to Charlie and the
15 CI, and he threatened to negotiate the check himself. Charlie
16 is on tape explaining to the CI that he told him to tear it up,
17 graphically told him to tear it up, I've got 20 more.

18 Q. Okay. Now, once you received from the CI the copy of the
19 \$538,452 check, did you determine from the Department of
20 Treasury where that was negotiated?

21 A. I did. It was negotiated at Wells Fargo Bank.

22 Q. And then did you subpoena Wells Fargo records to determine
23 what happened to those proceeds?

24 A. I did.

25 Q. And where did those proceeds go just generally?

1 A. They went to a bank account owned by signers Cordell and
2 Calvin Barnes.

3 Q. And did they share any of the money with other people?

4 A. They did.

5 Q. And who were they?

6 A. They distributed the funds to the Klein Group which is
7 owned by Derrick Lawson. They distributed the funds to a
8 Reynold Scott. They distributed the funds to several others.

9 Q. Okay. And is there anything on the tapes with Charlie and
10 Anthony Shivers that talk about who they were -- the names of
11 the people they were having negotiate their checks at the time?

12 A. There is. With Anthony he has mentioned the name Cal. He
13 has mentioned -- he has actually mentioned the name Calvin as
14 well. He has mentioned -- and Cal, Cal or Calvin, is --
15 Anthony knew that the money was held up in Cal's account, and
16 he knew that Cal was under -- which he was under investigation
17 and that he thought -- he says this on tape that he thought he
18 was going to get wrapped up or caught and then start talking.
19 And Charlie also said it on tape that his money was tied up.
20 However, I'm not sure if they know the intent of Cal with the
21 funds. But they knew --

22 Q. In fact, was the money tied up?

23 A. That was the money tied up according to tape-recordings
24 from Anthony and Charlie.

25 Q. But, in fact, co-conspirators have spent that one?

1 A. They have.

2 Q. Okay. And was Derrick mentioned on tape and Scott as the
3 people that were negotiating the checks for him?

4 A. They were.

5 Q. Okay. Now, did you -- by checking the accounts of Cal and
6 Derrick, did you find other fraudulent IRS tax refund checks
7 from this gas credit thing -- scam?

8 A. We did. Wells Fargo was able to provide three additional
9 copies of U.S. Treasury checks that were filed in the same
10 transportation names in similar amounts as well.

11 Can I look at my notes and -- from Exhibit 1 I think it
12 has -- yeah.

13 Q. And when you -- let me ask the next question.

14 A. Okay.

15 Q. When you executed the search warrant at 508 Morgan Street
16 on Saturday, did you find three of those checks or copies of
17 three of those checks?

18 A. We did. And I know Cargo Express, Inc., was one that
19 wasn't one of the checks funded by Wells Fargo but was another
20 check that we investigated previously. I believe it was --

21 Q. And, in fact, has the person that negotiated that check
22 been sentenced?

23 A. The person has been sentenced. His -- I earlier stated it
24 was Leroy Carter. Leroy Carter was the alias that he was
25 using. His correct name was Demetrius Weddle.

1 Q. Okay. And had you found from Wells Fargo the Southard
2 Distributing of Tampa, Inc., that you also found at
3 Mr. Shivers' house?

4 A. Yes, ma'am. That's correct.

5 Q. And how much was the amount of that check?

6 A. Southard Distributing of Tampa? Is that the one you are
7 applying to?

8 Q. Yes.

9 A. \$326,764.

10 Q. And the -- of course, the Transportation Freight and
11 Consultants checks?

12 A. Transportation Freight Consultants, Inc., check --

13 Q. Right.

14 A. -- was 300 -- the return was for \$336 -- or \$336,262.

15 Q. Okay. And what about Packaging Agents of Miami, did you
16 have that check from Wells Fargo?

17 A. Yes, that check was provided by Wells Fargo.

18 Q. And did you also find a copy at Mr. Shivers' house?

19 A. I did.

20 Q. On the tape, what do you hear Mr. Shivers discussing about
21 these checks? What was he doing with them?

22 A. At the time of the tape he was -- and the CI explained to
23 us that he identified exactly where the folder was, and he had
24 a yellow folder. And he had various tax return information,
25 much of what is found here on this list, and then copies of

1 checks and as well as the original treasury check, the five
2 hundred -- from Transportation Distributing Consultants, Inc.,
3 that was not negotiated properly.

4 And when we executed the search warrant the following day,
5 we found all those items together in a folder, in a yellow
6 folder in a FedEx envelope just like the CI explained. But the
7 -- and on the tape you can -- if that's what you're asking --
8 on the tape you can -- it's very obvious when he is explaining
9 and showing these checks to the CI.

10 Q. Okay. And on that -- during that same conversation, did
11 Mr. Shivers explain how he kept his DNA off the tax returns he
12 was preparing?

13 A. He did.

14 Q. How did he do that?

15 A. He described latex gloves and a -- I believe a body latex
16 put over himself.

17 Q. Okay. Now, you previously testified that Charlie Shivers
18 described on this tape that he had checks sent to California,
19 New York and Oklahoma. And you told us that the Transportation
20 and Distributing check -- Consultants check was sent to
21 California.

22 Did you recover from Wells Fargo and from Mr. Shivers
23 checks sent to New York and Oklahoma?

24 A. We did.

25 Q. Okay. During this May 11th conversation, did the

1 Defendant talk about using the same templates? And, if so,
2 would you tell us and what did he say about that?

3 A. The CI described that he would use the same templates to
4 file these returns; and the same template as the Transportation
5 Distributing Consultants, I believe, was what he was referring
6 to.

7 Q. And during your search, did you find another check for the
8 same exact amount of 538,452, the Air Cargos, Inc., return?
9 Was that for the same amount?

10 I show you -- look at Government's Exhibit 1.

11 A. That is correct.

12 Q. And both the original check and the replacement check for
13 Transportation and Distributing Consultants was that same
14 amount; is that correct?

15 A. That is correct.

16 Q. Did Mr. Shivers characterize what he was doing regarding
17 the hustle?

18 A. He was playing a game.

19 Q. Okay. Did he use the term "a good hustle and free money"?

20 A. He did.

21 Q. Did he say how much on that tape -- how much that he had
22 received in the past couple of years from this check scam?

23 A. The CI stated that he in a bragging fashion described
24 three million in the past two years.

25 Q. And was that during this recorded conversation?

1 A. It was.

2 Q. Did he have any -- and did you locate or were you a part
3 of the team executing the search warrant?

4 A. I was.

5 Q. And did you locate the documents, exhibits I have
6 previously -- did your team locate the documents I previously
7 marked as Government's Exhibit 2 through 9 at Mr. Shivers' --
8 where he was staying there at 508 Morgan Street?

9 A. That is correct.

10 Q. And would you describe where he was staying there. Did he
11 have a bedroom, or where was he staying?

12 A. No. His living quarters was the living room which had a
13 desk, a couch. And he would stay on the couch; and all of his
14 items, possessions were in that living room.

15 Q. Okay. Did he appear to be packing?

16 A. He did.

17 Q. And have you reviewed and listened to the tape, May the
18 11th tape?

19 A. Yes, ma'am, I have.

20 Q. And have you briefly reviewed the draft transcript?

21 A. Yes, I did.

22 Q. And the highlighted quotes dealing with Mr. Shivers' plans
23 to leave, were those on the tape?

24 A. They were on the tape.

25 MS. MCKENZIE: Nothing further.

1 THE COURT: Cross, Ms. Hanson?

2 MS. MCKENZIE: We are offering -- I believe the Court
3 has already accepted 1 through 12.

4 THE COURT: Yeah, I'll admit those.

5 - - -

6 CROSS-EXAMINATION

7 BY MS. HANSON:

8 Q. Afternoon, agent. How are you?

9 A. Good afternoon. Good.

10 Q. Now, as I understand it, you began the -- I'll just turn
11 that down a little bit.

12 You began the investigation as a result of contact from a
13 CI? Someone came to you, correct?

14 A. That is correct.

15 Q. And that person indicated that he or she had seen a check,
16 a U.S. Treasury check, in a certain location, right?

17 A. He had a copy of a check, yes.

18 Q. Okay. He had a copy of a check.

19 And is it your understanding the copy was obtained from
20 Anthony Shivers' vehicle?

21 A. That's correct.

22 Q. As opposed to Charlie Shivers' vehicle?

23 A. I know Anthony was driving the vehicle. I don't know
24 whose vehicle it was specifically, but --

25 Q. Okay.

1 A. He might have been driving Charlie's vehicle. I don't
2 know.

3 Q. So it's your understanding when the CI came into
4 possession of that check he was in the presence of Anthony
5 Shivers and not Charlie Shivers, correct?

6 A. He was not in the presence of Charlie, no.

7 Q. Okay.

8 A. Yeah, that's correct.

9 Q. That's what I'm getting at.

10 And this CI had had a number of conversations with
11 Mr. Anthony Shivers at that particular point, correct?

12 A. Yes.

13 Q. And this was as of approximately what time, March or April
14 of 2012?

15 A. Late February of 2012 and early March of 2012.

16 Q. Okay. And that individual was due to be sentenced in
17 federal court in April; is that correct?

18 A. That is correct.

19 Q. Now, when this person came to you and gave you a copy of
20 that check, you then went to Wells Fargo with that check? Or
21 where did you -- what did you do with that check?

22 A. The United States Treasury first and then figure out where
23 the check was negotiated so I could figure out which bank to
24 subpoena the information for.

25 Q. So the information that the check was a re-issued refund

1 or credit, did that come from the CI or did that come from the
2 U.S. Treasury or Wells Fargo?

3 A. The CI knew that it was a re-issued check as well.

4 Q. Okay. And that information was based on conversations
5 with Anthony Shivers; is that your understanding?

6 A. Anthony -- yes, yes.

7 Q. Okay. At that particular point?

8 A. At that point, yes.

9 Q. Okay. Now, when the check was -- or when you saw the
10 re-issued check itself, there wasn't any indication that the
11 check had been endorsed by Charlie Shivers, correct?

12 A. No.

13 Q. Was it signed at all?

14 A. That particular check was signed, yes.

15 Q. Okay.

16 A. The re-issued check?

17 Q. Yes.

18 A. The one that I have -- yes.

19 Q. Could you tell what name was on that re-issue?

20 A. It was Cordell Barnes.

21 Q. Did you do any handwriting analysis to confirm whether
22 that handwriting was similar to Charlie Shivers' or not?

23 A. No.

24 Q. Or Anthony Shivers' for that matter?

25 A. No.

1 Q. Okay. And was there any indication that that check had
2 been mailed to the address of 508 Morgan Street?

3 A. No.

4 Q. Anywhere in Atlanta, the Atlanta area?

5 A. No.

6 Q. Okay. It was mailed to another state, correct?

7 A. That is correct.

8 Q. Do you know what state off the top of your head?

9 A. California.

10 Q. Okay. California.

11 Now, you then began to monitor some conversations between
12 the confidential informant and Anthony Shivers; is that
13 correct?

14 A. That is correct.

15 Q. And those conversations were monitored during April of
16 2012?

17 A. Correct.

18 Q. It wasn't until last Friday as I understand it that there
19 was a conversation monitored with Charlie Shivers?

20 A. Correct.

21 Q. Okay. So the conversations that were reviewed between
22 Mr. Anthony Shivers and the CI were pretty much Anthony talking
23 about the alleged scheme, correct?

24 A. The recorded conversations, yes, that's correct.

25 Q. Sorry. Did I say monitored, or what did I say?

1 A. No. I'm sorry. I was saying that of recorded
2 conversations that I have Charlie -- the last one of May 11th
3 was the only recorded conversation I have with Charlie.

4 Q. Okay.

5 A. If that's what you're getting at.

6 Q. Okay. So back to Anthony.

7 So the conversations between the confidential informant
8 and Anthony are concerning this alleged scheme to get back some
9 income tax credits for fuel taxes, correct?

10 A. Correct.

11 Q. And Anthony indicates -- it's Anthony who indicates that
12 Charlie is the brains behind the operation; is that right?

13 A. The CI has stated that Charlie told him that as well at
14 his house.

15 Q. When did he indicate that Charlie told him that?

16 A. He was -- the CI was at his house talking with Anthony,
17 and then Charlie came outside. And I believe -- I have it in
18 my notes, but I believe that was late February.

19 Q. Okay. Help me out. The CI was at whose house?

20 A. Was at 508 Morgan Street.

21 Q. Okay. Which is where you --

22 A. Which is where Anthony stays sometimes. But that's where
23 Charlie -- that's the premises -- that's where he lived when he
24 stayed here. And Charlie came outside, and the CI spoke with
25 him about --

1 Q. Okay. So we have three individuals at least who claim the
2 residence 508 Morgan Street, Charlie Shivers, Charlie Shivers
3 -- excuse me -- Anthony Shivers and another individual; is that
4 correct?

5 A. There is another individual that lives there now. But I
6 don't know if Anthony has claimed that as his residence or not.
7 But the appearance is that he stayed there from time to time or
8 at sometime he did.

9 Q. Same thing with Charlie, correct?

10 A. That Charlie stayed there?

11 Q. Stayed there from time to time.

12 A. Well, I think Charlie that was his place to stay when he
13 came to the United States when he was back home. So --

14 Q. Okay.

15 A. -- I'd say more often than not.

16 Q. So that was his local residence? 508 Morgan Street was
17 Charlie Shivers' local residence?

18 A. Yes. That I know of since I've -- yes.

19 Q. Okay. Was it also the primary residence of anyone else?

20 A. He has I know one roommate.

21 Q. Okay. And do you know that roommate's -- well, I don't
22 need to know his name. But he has one roommate who's also
23 about the same age, a male; is that correct?

24 A. I'm not positive on his age, but he's -- he appeared to be
25 much younger, but I'm not sure off the top of my head how old

1 he is.

2 Q. Okay. When you reviewed the tax return forms that were at
3 the 508 Morgan Street residence, there was no indication that
4 Charlie Shivers himself filled out those forms, was there?

5 A. I can't tell because -- yeah, I mean, I can't tell who
6 filled it out because the names are different and --

7 Q. Right, right. The names are different.

8 Is some of it in different fonts?

9 A. I'm not sure if it's in different fonts.

10 Q. Okay.

11 A. The actual forms. But -- what are you -- I don't
12 understand. They appear to be in the same font I thought, but
13 I don't know.

14 Q. That's my question. Does it appear to be in the same
15 font?

16 A. It looked like it was. I don't know.

17 Q. Okay.

18 A. I haven't -- you know.

19 Q. All right. Fair enough.

20 Did they appear to be signed by the same individual?

21 And I am asking you as a layperson. I'm not asking you as
22 a handwriting expert. Did they appear to be signed by the same
23 individual?

24 A. I'm not -- I can't confirm that. I don't know.

25 Q. Okay. Were any of them examined to determine whether

1 Charlie Shivers' handwriting was consistent with the signatures
2 on the forms?

3 A. They have not been examined yet.

4 Q. Okay. Now, my understanding is that Anthony, it was
5 Anthony Shivers who believed at some point that Cal or Calvin
6 was being investigated by the police; is that correct -- or by
7 law enforcement in general?

8 A. That's correct.

9 Q. Okay. And that conversation came up between -- sorry --
10 between the confidential informant and Anthony Shivers, right?

11 A. That conversation did occur, yes.

12 Q. Okay. Not between Charlie Shivers and the confidential
13 informant?

14 A. I'd have to examine the transcript again. But I don't
15 recall him using a name, Charlie using the name specifically.
16 He did speak about the subject check, the \$538,000 one that Cal
17 deposited. But I'm not positive he mentioned the name.

18 Q. Okay. And there was no indication -- okay. When you
19 spoke about the appearance of Charlie Shivers to have been
20 packing his suitcase when you went to conduct the search at 508
21 Morgan Street, was the indication that you were speaking of the
22 presence of a black suitcase?

23 A. There was -- yeah, there was a couple of suitcases; but
24 there was one on the couch.

25 Q. Okay. How many of them were full?

1 A. They were at halfway full, halfway empty with paperwork
2 scattered in 'em and --

3 Q. What kind of paperwork were in them -- was in them?

4 A. Various tax documents and receipts and gambling documents
5 and --

6 Q. Any passports in them?

7 A. There was a passport, yes.

8 Q. Where?

9 A. On -- I believe the passport was on -- or not in the
10 suitcase. I believe the passport was on the desk.

11 Q. What about -- I'm sorry. How many suitcases were halfway
12 full?

13 You said they were halfway full. How many suitcases were
14 halfway full and how many were empty for that matter?

15 A. Yeah, there was one black bag that had been identified the
16 previous day; and it was empty, and all the pockets were open
17 on it. There was also a larger suitcase, black one; and it was
18 halfway empty, halfway full it appeared on the couch.

19 Q. Any clothes inside of it?

20 A. I believe there were clothes in there.

21 Q. Any idea how many changes of clothes were inside of it?

22 A. I can't recall to be honest with you.

23 Q. Did you go into the garage of the residence?

24 A. I did go in the garage.

25 Q. Was there anything in the garage when you went in there?

1 A. There was a grill and some weights. In the garage that
2 was particular to Charlie that he said was his space -- there
3 was three spaces in the garage, and his space is the one I
4 observed. And there was -- I believe there was weights and a
5 grill and just --

6 Q. Personal items?

7 A. Yeah, I guess. I mean, there was no paperwork or
8 anything.

9 Q. Okay.

10 A. There's nothing I searched or seized from the garage.

11 MS. HANSON: Okay. Give me one second.

12 (Pause.)

13 MS. HANSON: I think that's all I have.

14 THE COURT: Yes, ma'am.

15 (Pause.)

16 - - -

17 REDIRECT EXAMINATION

18 BY MS. MCKENZIE:

19 Q. Was it the plan for Mr. Charlie Shivers to receive the
20 checks or cash them himself?

21 A. No, it was not.

22 Q. Were the tax returns -- did you determine what area of the
23 house that was used by Charlie Shivers?

24 A. I did.

25 Q. What area was that?

1 A. The whole living room area according to himself and
2 according to his roommate that was present.

3 Q. Okay. And were the tax returns and the checks found in
4 that area?

5 A. They were.

6 Q. Were they -- was there a yellow folder?

7 A. There was a yellow folder.

8 Q. Had the CI told you anything about the yellow folder?

9 A. The CI specifically said to look in the yellow folder
10 because that's the folder that had everything that we were
11 looking for, the treasury check -- the copy of the treasury
12 checks and the original check that was issued --

13 Q. And did you find checks and returns in that yellow folder?

14 A. We found -- yes, we did.

15 Q. And is that the folder that was opened during the taking
16 where the dates were being read off the check according to the
17 CI?

18 A. It appears -- according to the CI, it was. In listening
19 to the tape-recording, it appears that it was.

20 Q. And what was -- was Anthony involved in the conspiracy?
21 That is, what I'm asking you is was he trying to get other
22 people to cash checks?

23 A. He was.

24 Q. And how was the CI presented?

25 A. How was the CI presented?

1 Q. Yes. What could the CI offer?

2 A. Okay.

3 Q. What did you tell the CI to offer?

4 A. We -- in an attempt to get information on Charlie, we got
5 -- we conducted an undercover operation. And the CI presented
6 an undercover agent posing as a check-casher manager.

7 Q. Okay. And it was the CI and the undercover agent were to
8 negotiate these IRS refund checks, correct?

9 A. That is correct.

10 Q. Did Mr. Shivers have a -- Charlie Shivers have a
11 reservation to leave Atlanta on Saturday?

12 A. He did according to his own words.

13 Q. And where was that?

14 A. To LAX.

15 Q. And on the past trips to Australia that you documented,
16 how did he go? Did he go through LAX?

17 A. He exited from LAX, yes.

18 Q. Okay. And were you able to determine using the resources
19 of the Secret Service how or when Mr. Charlie Shivers returned
20 to the United States following his March the 27th, 2012, trip
21 to Australia?

22 A. We have been unable to in our database.

23 MS. MCKENZIE: Could I have just one moment?

24 THE COURT: Yes, ma'am.

25 (Pause.)

1 BY MS. MCKENZIE:

2 Q. You weren't involved in the prosecution of the CI, were
3 you?

4 A. No, I was not.

5 Q. So you don't particularly have direct knowledge of exactly
6 when he was sentenced?

7 A. Of when he was sentenced?

8 Q. Yeah.

9 A. No, I don't.

10 Q. If I could just correct the record, it was January of
11 2012.

12 A. Oh, I was -- I was thinking --

13 MS. MCKENZIE: I don't think it matters, but I don't
14 want to leave something...

15 And because the CI's -- one of his names is mentioned
16 in the transcript, if we could file -- I believe the transcript
17 is Number 11. If we could file that under seal.

18 THE COURT: No problem.

19 MS. HANSON: I don't have anything further for Agent
20 Herrera.

21 THE COURT: All right. Agent, you may step down.

22 Any other evidence on behalf of the Government as to
23 probable cause?

24 MS. MCKENZIE: No, Your Honor.

25 THE COURT: Any evidence on behalf of Mr. Shivers as

1 to probable cause?

2 MS. HANSON: Not as to probable cause.

3 THE COURT: Do you wish to be heard on probable
4 cause?

5 MS. HANSON: No, Your Honor. We'll submit it.

6 THE COURT: All right. I find that there's probable
7 cause to believe that Mr. Shivers committed the offenses set
8 forth in the criminal complaint, that is, violating 18 United
9 States Code, Section 641, that is, stealing funds and money of
10 the United States, and also 18 United States Code, Section
11 1341, which is using the mails in furtherance of a scheme in
12 artifice to defraud the United States. And so I'll bind the
13 case over to the grand jury.

14 Does the Government want to say anything else on the
15 issue of detention?

16 MS. MCKENZIE: The Defendant's own words say it all.
17 He knew that people were being arrested, were being
18 investigated and feared cooperation. So he was outta here. He
19 hit the eject button. He was gone. And he had all his
20 resources abroad, far more -- a new pad, far more than just a
21 couch here in Atlanta.

22 And the most important thing that I think
23 demonstrates that there's no way he's going to follow the
24 directions of this Court is because he has already lied to an
25 agent of the Court saying this was his ex-girlfriend, trying to

1 minimize to the Probation/Pretrial Services officer his contact
2 with Australia when, in fact, three days before he was talking
3 about his girlfriend, marriage, his bank accounts in Australia
4 and his new pad in Australia and his business in Australia
5 which he also concealed from the -- that residence and the
6 business in Australia, he concealed that from Pretrial
7 Services.

8 He said over and over he's fixing to be across the
9 Pacific. We know he already was headed out for LAX.
10 Everything he said on the tape has been verified and that he's
11 got -- we can't even stop the 800,000 that he knows is -- he
12 thinks is coming to him from IRS, much less whatever business
13 he's running over in Australia or whatever money he's already
14 moved there to the bank accounts. And he says he's got enough
15 to subsist over there on tape.

16 So I don't believe there are any sets -- the evidence
17 shows there are no sets of circumstances that would ensure his
18 appearance here in Atlanta to face a jail term which could be
19 as much as ten years if the guidelines are followed at
20 sentencing.

21 THE COURT: Ms. Hanson?

22 MS. HANSON: Thank you, Your Honor.

23 Before I begin, Government's Exhibit Number 7 is
24 concerning an account, a bank account with Chase Bank. I think
25 the Government indicated that that was an account that was

1 owned by Charlie Shivers, but it appears to be according to the
2 document itself an account that's linked to Anthony D.
3 Shivers --

4 THE COURT: I saw that.

5 MS. HANSON: -- at the same address. I don't think
6 it's relevant. I did not catch that -- I'm sorry -- before the
7 admission of the documents.

8 But, anyway, the Government has no -- they have no
9 rebuttable presumption to invoke in this case. But there's no
10 indication that there is any violence, so I don't think that's
11 an issue. The question is whether or not he's a flight risk
12 obviously.

13 He has a girlfriend. I have inquired as to whether
14 she is an ex-girlfriend or a current girlfriend; and the
15 indication that I have is that she is, in fact, a girlfriend by
16 the name of Christina Sikos -- Sikos, Sikos [phonetic] -- and
17 I'll spell that for the court reporter later -- in Australia
18 that he has gone to visit on a number of occasions. There's no
19 question about that. However, there is no indication even in
20 the transcripts that the Government has put forward that
21 Mr. Shivers was ever aware that he was under investigation.

22 I have looked back at the transcript -- and, granted,
23 I'm at a little bit of a disadvantage. Ms. McKenzie has been
24 kind enough to provide me with that transcript today. But I
25 have looked through it, and I don't see any indication that he

1 had any knowledge or any perceived -- perception that he was
2 being monitored or surveilled or that even anybody involved in
3 this alleged operation was being investigated.

4 Agent Herrera advised that as far as he knew
5 Mr. Charlie Shivers was not aware of Cal or Calvin or whoever
6 was addressed during the conversation of his intentions with
7 regard to the money that was being held.

8 Mr. Shivers has family here in court today: His
9 mother, Ms. Sylvia Rosser; his stepfather, Stephen Rosser.
10 They live in East Point, Georgia, as the Pretrial Services
11 Report indicates. His roommate at 508 Morgan Street, Stephen
12 Penn, is present in court to support him. He has a daughter
13 who lives in town in Lithonia, Georgia. And his daughter's
14 mother lives there as well. In fact, a lot of the transcript
15 that the Court has before you indicates that he has come back
16 on a number of occasions to take care of business with regard
17 to his daughter Chelsea.

18 The Government indicated that there was some pad in
19 Australia, and the only indication I can find there's a pad in
20 Australia occurs on page 9 of the transcript in Government's
21 Exhibit Number 11. It appears that that -- the context of that
22 conversation is about a passport, not about a place to live,
23 not about a pad or an apartment or a flat or any type of place
24 to live. He is talking about microchips in passports, the new
25 type of passport that he came back to get to renew his

1 passport. So the context of that does not show that he is
2 talking about a location that he has to live in Australia at
3 all.

4 There's no indication that he has an established
5 business in Australia. He had a -- one account that shows with
6 \$200, roughly \$200 in it. And then there are a couple of
7 receipts that show \$1,000 withdrawals and a hotel -- I guess it
8 was a hotel brochure or travel guide or something to that
9 effect. So there's no indication that he had any kind of an
10 established business in Australia.

11 So he went back and forth to Australia on a couple of
12 occasions. So he was planning to go to Australia at some point
13 in the future. If he didn't know that the Government was on to
14 him, on to any alleged scheme, then it doesn't matter if he was
15 planning to go back and forth to Australia. I can go to
16 Australia tomorrow, and it's not going to mean anything. It's
17 not going to mean I'm going to stay there as much as I might
18 like to.

19 He -- as far as the economic loss to the Government,
20 I'm not sure that I understand that argument. If the five --
21 if the \$800,000 is lost, it doesn't matter whether Mr. Shivers
22 is in jail or not. According to the Government's theory of
23 this scheme, anybody can go out and cash these checks. It
24 doesn't require Mr. Shivers' presence or assistance or
25 monitoring in order to do that. So there's really no economic

1 harm to the Government, potential economic harm to the
2 Government if he remains on bond.

3 He has enough contacts to the community. The
4 Government's in possession of his passport. Certainly he
5 cannot get anywhere, particularly if he is electronically
6 monitored. So we would ask the Court to impose pretrial
7 monitoring and supervision, allow him to live at his mother's
8 home in East Point and to be monitored outside out of that
9 residence, impose a curfew, whatever the Court thinks is
10 necessary to ensure that he stays in town.

11 THE COURT: All right. Thank you, Ms. Hanson.

12 Is there anything else, Ms. McKenzie?

13 MS. MCKENZIE: I'd just point out that the Defendant
14 said in his own words that he had a business that grossed three
15 to four million dollars in Australia. And he said that his
16 co-con- -- well, the N word -- were taking away my breathing
17 room, it's time to go. That is, he is afraid they were
18 talking. He sold everything. It's time to just go.

19 It's clear that he was going because he knew that --
20 about the investigation and he was -- and what this is before
21 he was ever charged. So now that he is charged and knows that
22 he is the complete focus at this point he's certainly going to
23 get out of town and hit the eject button just the way he said
24 he was going to do.

25 THE COURT: All right. Well, I'm going to detain

1 Mr. Shivers. I find that he is both a financial danger to the
2 community and a risk of flight. First, as to financial danger,
3 he has -- there's probable cause to believe that he has
4 orchestrated a sophisticated fraud scheme, really a theft
5 scheme where he took extraordinary sophisticated measures to
6 avoid being discovered by sending money out of town, wearing
7 gloves, things of that nature, basically stealing the
8 identities of these defunct corporations and thereby obtain a
9 lot of money, some of which, if not most of which, appears to
10 have been deposited outside the United States.

11 He is also a risk of flight for the same reasons. He
12 has assets out of state that would differentiate Mr. Shivers
13 from Ms. Hanson. He has money that he can live on once it --
14 once he gets out. I find that the transcript reflects that he
15 says he has no assets, incomes, liabilities or monthly
16 expenses; and he last stated that he was employed in December
17 of 2007 and he earns money by doing general labor work for
18 cash. And so those statements are false in light of what he
19 told either the CI or the undercover agent in the May 11th
20 transcript.

21 So he also has somewhat of an inconsistent, if not
22 shaky, residence history. And so I find that based on the
23 circumstances of this case and balancing all the 3142 factors
24 that there are no conditions or set of conditions that will
25 assure the safety of the community or the appearance of the

1 Defendant for trial. So, therefore, I will detain him pending
2 resolution of the charges against him.

3 Is there anything further in Mr. Shivers' case this
4 afternoon?

5 MS. MCKENZIE: No, Your Honor, not for the
6 Government.

7 MS. HANSON: No, not for the defense.

8 THE COURT: All right. Well, Mr. Shivers, you are
9 remanded to the custody of the U.S. Marshal. Good luck to you,
10 sir.

11 (Proceedings concluded.)

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1 C E R T I F I C A T E

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3 UNITED STATES DISTRICT COURT:

4 NORTHERN DISTRICT OF GEORGIA:

5

6 I hereby certify that the foregoing pages, 1 through
7 42, are a true and correct copy of the digitally recorded
8 proceedings transcribed by me in the case aforesaid.

9 This the 27th day of July, 2012.

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Susan C. Baker, RMR, CRR
Official Court Reporter
United States District Court

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